

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

ERIC WINSTON
ADC #105483

PLAINTIFF

V.

NO: 5:08CV00174 BSM

MARSHAL GONDA *et al.*

DEFENDANTS

ORDER

On July 9, 2008, United States Magistrate Judge H. David Young, submitted his Proposed Findings and Recommended Disposition to this court. Judge Young recommended that plaintiff's complaint be dismissed without prejudice. Plaintiff has filed objections to Judge Young's Proposed Findings and Recommended Disposition concerning the running of the statute of limitations. In Arkansas the statute of limitations for 1983 actions is three years. *Baker v. Chisom*, 501 F.3d 920, *922 (8th Cir. 2007); *Williams v. Bradshaw*, 459 F.3d 846, *847 (8th Cir. 2006). The Arkansas savings statute provides that "if any action is commenced within the time . . . prescribed . . . and the plaintiff therein suffers a nonsuit . . . the plaintiff may commence a new action within (1) one year after the nonsuit." Ark. Code Ann. § 16-56-126 (Repl. 2005); *Miller v. Norris*, 247 F.3d 736, *739 (8th Cir. 2001). A dismissal of a complaint without prejudice is the same as a nonsuit. *See Miller*, 247 F.3d at *739. After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS THEREFORE ORDERED THAT:

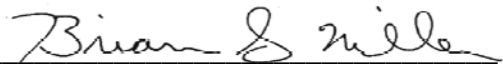
1. Plaintiff's complaint (docket entry #2) is dismissed without prejudice.

2. Plaintiff's application for leave to proceed *in forma pauperis* (docket entry #1) is denied as moot.

3. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

4. All other pending motions are also denied as moot.

DATED this 7th day of August, 2008.


UNITED STATES DISTRICT JUDGE